IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 17TH AUGUST 2007 / 26TH SRAVANA 1929

WP(C).No. 5883 of 2007(A)

OS.564/1992 of PRL.M.C., KOCHI
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PETITIONER:

THRESSIAMMA, W/O.LATE DEVASYKUTTY @ SEBASTINE, MAMPILLY HOUSE, NJARAKKAL P.O., ERNAKULAM DISTRICT.

BY ADV. SRI.SABU GEORGE

RESPONDENTS:
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1. **PAULOSE, S/O.CHEEKU, THANNIPILLY HOUSE, WARD-III, NAYARAMBALAM, ERNAKULAM.**

2. **PHILO, W/O.PAULOSE, DO. DO.**

BY ADV. SRI.M.P.KRISHNAN NAIR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.5883/2007 A

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE JUDGMENT OF THE MUNSIFF COURT, KOCHI DTD. 03/11/1995 IN O.S.564/92 AND O.S.559/1993.**

EXT.P2: **COPY OF JUDGMENT IN C.C.37/94 OF JFCM COURT-I, KOCHI, DTD. 30/09/1997.**

EXT.P3: **COPY OF THE INTERIM REPORT DTD. 14/07/2003 FILED BY THE ADVOCATE COMMISSIONER.**

EXT.P4: **COPY OF THE COMMISSIONERS REPORT DTD. 15/12/2003.**

EXT.P5: **COPY OF THE 'B' DIARY IN E.P.37/37102 IN O.S.564/92.**

EXT.P6: **COPY OF THE ORDER OF THE MUNSIFF COURT, KOCHI IN E.P.37/02 IN O.S.564/92 DTD. 04/01/2006.**

EXT.P7: **COPY OF THE ORDER OF THE MUNSIFF COURT, KOCHI DTD. 30/11/2006 IN E.P.37/2002 IN O.S.564/92.**

/TRUE COPY/

P.S.TO JUDGE

KSS

M.N.KRISHNAN, J

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W.P.(C) No.5883 OF 2007

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Dated this the 17th day of August 2007

JUDGMENT

This writ petition is filed to set aside Ext.P7 order. The writ petitioner is the decree holder and she moved an application for sending the judgment debtors to prison and for enforcement of the decree. By Ext.P6 order dated 4.11.2006, the court below directed (1)the second judgment debtor to be detained in civil prison for two months or till the decree is obeyed, which ever is earlier, (2) the red shaded area shown in Ext.C2(a) beyond the kudikidappu 10 cents of land is ordered to be removed within 5 days from 4.11.2006 and (3) 10 cents of land of the judgment debtors comprised in Survey No.560 is hereby attached. Take steps to communicate attachment. Thereafter on 30.11.2006 since the decree holder was absent and since there was no representation the execution petition was dismissed with costs with a direction to the Jail Superintendent to release the second judgment debtor forthwith. The said order is under challenge.

2. The second judgment debtor, who was in civil prison was ordered to be released and in accordance with the same, she has been released. After

hearing both sides and considering the nature of the matter, in fairness, the counsel for the judgment debtors would submit that his clients were prepared to obey the order of the court. Already the second judgment debtor had served some time in the civil prison. There has been default on the part of the decree holder in taking steps in time. So, taking into consideration the cumulative effect of all these, I feel that the matter can be finally closed as follows:(1) The judgment debtors are directed to obey the decree passed by the court, (2) The Munsiff is directed to depute an Amin so that the red shaded area shown in Ext.C2(a) beyond the kudikidappu 10 cents of land is ordered to be removed as stated in clause(2) of Ext.P6 order and (3)There is no further necessity to send the second judgment debtor again to the civil prison and there need not be any attachment of the property for disobedience of the decree of the court. It is made clear that if the judgment debtors again raise unnecessary objection, the court below is at liberty to consider afresh of the then situation and dispose of the matter in accordance with law.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-